

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

IN RE:

CHAPTER 7

LOYD TODD TALLY AND
KIMBERLY B. TALLY
DEBTORS

CASE NO. 09-15224-DWH

FIRST HORIZON HOME LOANS A DIVISION
OF FIRST TENNESSEE BANK NATIONAL ASSOCIATION

MOVANT

VS

LOYD TODD TALLY AND KIMBERLY B. TALLY
ALEX B. GATES, TRUSTEE

RESPONDENTS

MOTION FOR RELIEF FROM AUTOMATIC STAY AND
FOR ABANDONMENT OF PROPERTY

COMES NOW, First Horizon Home Loans a division of First Tennessee Bank National Association, ("Movant"), and files this motion seeking relief from the automatic stay now in effect in this cause, and in support thereof would show unto this Court the following:

- 1) This Court has jurisdiction of this matter pursuant to 28 U.S.C. Section 1334(a) and 11 U.S.C. Sections 362, 363, 552(b), and 554(b).
- 2) Loyd Todd Tally and Kimberly B. Tally ("Debtors") filed their petition under Chapter 7 of the Bankruptcy Code (11 U.S.C. 701, *et seq.*) on October 8, 2009. Subsequent thereto, Honorable Alex B. Gates was appointed trustee in this case.
- 3) Movant was at all times herein mentioned and now is a corporation duly organized under the laws of Kansas.

4) Debtors are the owners of certain real property ("the Property") located at 6579 Moondance Dr. Olive Branch, Mississippi, and being more particularly described as follows:

Lot 78 Cherokee Ridge 2nd Addition of Cherokee Valley Subdivision, in Section 32, Township 1 South, Range 6 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 83, Page 46, in the Office of the Chancery Clerk of DeSoto County, Mississippi.

Subject to subdivision and zoning regulations in effect in DeSoto County, Mississippi and utility easements and restrictive covenants of record in Cherokee Ridge, Part of Cherokee Valley P.U.D.

Together with all improvements situated thereon and all appurtenances thereunto belonging, and all rights of ingress and egress which grantor owns.

Subject to the law of the United States, the State of Mississippi and their respective political subdivision and easements for public road and utilities. Also, subject to all zoning laws, and subdivision regulations and health department regulations of DeSoto County, Mississippi.

5) Movant has provided permanent financing in connection with Debtors' purchase of the above-described property.

6) The indebtedness of Debtors to Movant (the "Indebtedness") is evidenced by a Deed of Trust Note dated December 27, 2004, executed by Lloyd Todd Tally to First Horizon Home Loan Corporation D/B/A First Tennessee Home Loans. A true copy of said Deed of Trust Note is attached hereto as Exhibit "A".

7) The obligation of Debtor to repay the Indebtedness is secured by a Deed of Trust dated December 27, 2004, executed by Lloyd Todd Tally, married and Kim Tally to First Horizon Home Loan Corporation D/B/A First Tennessee Home Loans. Said Deed of Trust was duly perfected by filing in the office of the Chancery Clerk of DeSoto County, Mississippi on April 20, 2005 at 10:01a.m., and is recorded in said office Book 2199 at Page 712, a true copy of which is attached hereto as Exhibit "B".

8) The Indebtedness is in default, and as of October, 2009 there was an outstanding balance of approximately \$369,861.36 due from Debtors to Movant, plus attorney's fees and costs. Debtors' present monthly payments are \$2,498.07, with a late charge of \$128.32. Interest continues to accrue on the Indebtedness at a daily rate of approximately \$42.16.

9) The Indebtedness has remained in default since December, 2008, and the total arrearage through October, 2009 is \$32,818.45, plus attorney's fees and costs.

10) Movant is informed and believes, and on most basis alleges, that the value of the property is approximately \$369,861.36. Movant is unaware of any other liens encumbering the subject property. As a result of the automatic stay in effect in this cause, Movant has been unable to take any action as would be reasonably necessary to prevent further deterioration of the Property, and in order to adequately protect its security interest.

11) By reason of the foregoing, good cause exists to vacate the automatic stay of 11 U.S.C. Section 362(a) of the Bankruptcy Code to permit Movant to foreclose its Deed of Trust as authorized by the laws of the State of Mississippi.

WHEREFORE, Movant prays:

1) For an order granting Movant relief from the automatic stay of 11 U.S.C. Section 362(a) of the Bankruptcy Code;

2) For an order requiring the Trustee to abandon the subject property pursuant to 11 U.S.C. Section 554(b);

3) For such other and further relief as is to the Court just and proper.

Dated: October 27, 2009

First Horizon Home Loans a division of First
Tennessee Bank National Association

BY: _____

R. CORY ANTHONY
ITS ATTORNEY
MSB #101755

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CERTIFICATE OF SERVICE

I, R. CORY ANTHONY, attorney for Movant, hereby certify that I have this date mailed a true and correct copy of the foregoing Motion For Relief From Automatic Stay to, Honorable Giles W. King, the Debtor's attorney, at 5699 Getwell Road, Bldg F, Ste. 1, Southaven, MS 38672; Honorable Alex B. Gates, Trustee, at Post Office Box 216, Sumner, Mississippi 38957; to Debtors at 6579 Moondance Dr., Olive Branch, Mississippi, 38654; and to the United States Trustee at 100 West Capitol Street, Room 706, Jackson, Mississippi 39269.

THIS, the 27th day of October, 2009.



R. CORY ANTHONY
MSB #101755